

Supreme Court, U. S.

FILED

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MICHAEL ROBBAN, JR., CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1976

No. **76-1256**

NETTIE MAE PEAK, et al.,
Petitioners,

v.

ALABAMA DEPARTMENT OF INDUSTRIAL RELATIONS and
FAIRVIEW NURSING HOME,
Respondents.

PETITION FOR WRIT OF CERTIORARI

To the Court of Civil Appeals of Alabama

BRIEF FOR [REDACTED] *RESPONDENT*
IN OPPOSITION

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Thereafter, Appellants petitioned the Supreme Court of Alabama for a Writ of Certiorari to the Civil Court of Appeals, which writ was initially granted, however, after review of the entire record and argument by respective Counsel; The Honorable Court quashed the writ as improvidently granted.

STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

Whether the Appellants are entitled to receive unemployment compensation during the period that their unemployment was directly due to a labor dispute still in active progress in the establishment in which they were last employed, when said labor dispute, involving the Appellants continued in active progress for the full period of time that compensation was disallowed?

STATEMENT OF THE FACTS

That on to-wit: March 11, 1972, a group of employees, including the Appellants, that were scheduled to work on the 7:a.m. to 3:p.m. shift, failed to report to work and left one hundred and fifteen sick and aged patients unattended. Discovering this condition at approximately 8:a.m. on March 11, 1972, Esther J. Johnston, the Nursing Home Owner, proceeded to call in relief employees only to have a large group of the people, who had failed to report to work push into her office, in a loud and unruly manner, demanding their pay "right then and now" when the scheduled pay day was 3:p.m. that afternoon, rather than 8:a.m. in the morning. Whereupon, your respondent advised the group, "that pay-checks were unsigned and could not be ready before 2:30 or 3:p.m." At which time said group walked down to the entrance driveway and joined the picket line forming there, returning at 3:p.m. demanding and receiving their pay in full.

SUMMARY OF ARGUMENT

The Cases at Bar are clearly controlled by Title 26, Sec. 180 and subsequent, particularly Section 214A of the Unemployment Compensation Act of Alabama, pursuant to which Statute, the

Appellants were disqualified from receiving benefits-for the period of time they were engaged in a labor dispute-in active progress-with their employer.

The Appellants position is totally without Merit, and the authorities cited do not apply to the Case at Bar.

ARGUMENT

Let us examine the Appellants position that the findings of the National Labor Relations Board (in its shifting role of investigator, advocate for employees, and Administrative Trial Judge) are "res-judicata" as to the Cases at Bar and "pre-emptive" to the jurisdiction of the Circuit Courts and the Civil Court of Appeals of the State of Alabama.

Question 1. Are the parties the same?

Answer: No, the Cases at Bar presents a group of Nursing Home employees Vs: the Industrial Relations Department of the State of Alabama.

Whereas, the National Labor Relations Board Case was: "N. L. R. B. Vs: Fairview Nursing Home" an action by an agency of the Federal Government Vs: a private employer.

Question 2. Are the applicable Laws the same or even similar?

Answer: No, the Cases at Bar are clearly controlled by Title 26, Sec. 180 and subsequent, particularly Sec. 214A — of the Code of the State of Alabama of 1940 — 1958. Whereas, the N. L. R. B. Vs: Fairview Nursing Home Case is based solely on Sec. 8A (1) and (3) of the National Labor Relations Act.

Please compare as follows:

Unemployment Compensation Act of Alabama, Title 26, Sec. 180 and subsequent. Code of Alabama 1940 — 1958. Specifically, Sec. 214A. Disqualified 1/ "For any week in which his total or partial unemployment is directly due to a labor dispute still in active progress in the establishment in which he is or was last employed; for the purposes of this section only, the term 'labor dispute' includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or repre-

sensation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms of conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee. This definition shall not relate to a dispute between an individual worker and his employer." (Emphasis added)

"Labor Management Relations Act of 1947, as Amended"

Unfair Labor Practices

Sec. 8. (a) It shall be an unfair labor practice for an employer —

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7:

(2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: Provided, That subject to rules and regulations made and published by the Board pursuant to section 6, an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay;

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: Provided, That nothing in this Act, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in section 8 (a) of this Act as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective-bargaining unit covered by such agreement when made, and (ii) unless following an election held as provided in section 9 (e) within one year preceding the effective date of such agreement, the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to recind the authority of such labor organization to make such an agreement: Provided further, That no employer shall

justify any discrimination against an employee for non-membership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership.

Bargaining freedom means both that employer and Union need not make any concessions as result of government compulsion and that they are free from having contract provisions imposed upon them against their will. N. L. Rel. Act. § 8 (a) as amended 29 U. S. Ca. A. § 158(a) 3.

Question: Are the issues the same?

Answer: No. In the Cases at Bar the issue is clearly "whether the Appellants are entitled to receive unemployment compensation during the period "that their employment is directly due to a labor dispute still in active progress in the establishment in which he is or was last employed" . . . (Fairview Nursing Home strike, involving the Appellants, including picketing, continued for the full period of time that compensation was disallowed.)

Whereas, in the case of the N. L. R. B. Vs: Fairview Nursing Home, the issue was, "whether the Employer Fairview Nursing Home had violated sections 8 a (1) and (3) of the Labor Management Relations Act?"

Question: Are the remedies the same?

Answer: No, the Appellants seek from the Industrial Relations Department payment of unemployment compensations to which they are not entitled during a period that their unemployment was directly due to a labor dispute in addition to the back pay already ordered by the N. L. R. B. for the same period of time from the Employer.

Res-judicate clearly means: "A thing adjudicated; A Case that has been decided".

Question: Does the decision in the N. L. R. B. Vs: Fairview Nursing Home decide the cases at Bar involving different parties controlled by different Laws with different issues and different decisions, requiring different remedies?

Answer: No, No, of course not.

Question: Then what is the purpose of these Appeals, and the unique theory of Appellants? (As clearly fabricated as the Testimony of the Claimants in the previous proceedings.)

Answer: Clearly, the Appellants, by and through their Union Counsel, seek the use and abuse of multi-million dollar Industrial Relations Department's Unemployment Compensation fund, provided by the Employers of the state, to finance their strikes against the Employers of the state in the furtherance of Union activities; contrary to the Unemployment Compensation Act of Alabama, Title 26, Sec. 180 and subsequent, and specifically Sec. 214A, thereof, and contrary to the intention of the Legislature in passing that legislation, and contrary to the interest of the great majority of the working people of the State of Alabama, who depend upon the Unemployment Compensation fund to see them through temporary periods of involuntary unemployment.

Question: Are the decisions of the N. L. R. B. and Fifth Circuit Court of Appeals in the N. L. R. B. Vs: Fairview Nursing Home Case pre-emptive and prohibit a contrary finding by the Alabama Industrial Relations Department and State Courts in the Case at Bar?

Answer: No, they are different matters, based on different laws in different jurisdictions, resulting in different decisions, as proven by Defendant's exhibits in the instant Case.

Question: How can the Department of Industrial Relations penalize employees, (as argued by the Appellants)?

Answer: Said employees voluntarily abandoned their employment and engaged in a walk-out and strike disqualifying themselves from benefits by reason of the labor dispute in progress.

Question: Does the Denial of Certiorari by the Supreme Court of the United States in the N. L. R. B. Vs: Fairview Nursing Home Case have any bearing on the Case at Bar, or any Case?

Answer: No, "Denial of Certiorari by U. S. Supreme Court carries with it no implication whatever regarding Court's views on Merits of the Case." (Beck V. Winters, C. A. Arkansas. 1969, 407 2nd 125, 89 Supreme Court 2104 395 U. S. 963.)

Question: Does the Supremacy Clause of the Constitution of the United States apply to the Case at Bar, as argued by Counsel for Appellants?

Answer: No. To the contrary, that honored document's "due process" clause, makes unlawful the deprivation of property without due process of law. Clearly, the Unemployment Com-

pensation fund of the Industrial Relations Department of the State of Alabama is "property" as contemplated by the second section of the fourteenth Amendment of the Constitution of the United States, and the State of Alabama through its Industrial Relations Department and its State Courts have lawfully exercised its authority in denying petitioners claims pursuant to the Controlling Statute Title 26, Sec. 180 and subsequent, and specifically Section 214 A, thereof; all under due process of Law and with every reasonable consideration of Appellants Claims.

It is respectfully submitted that Certiorari should be denied.



S. Patrick Robinson
Counsel for Appellees

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above and foregoing Brief has been served upon George C. Longshore, Esq., 409 North 21st Street, Birmingham, Alabama 35203 by U. S. Mail, postage prepaid, this the 5th Day of April, 1977.



S. Patrick Robinson